Chang Chai Chin & Anor v Superintendent of Lands and Surveys, Samaran Division and other references

HIGH COURT (KUCHING) — LAND REFERENCE NOS 15–08–2003-II, 15–09–2003-III(I), 15–11–2003-I, 15-02-2005-II, 15–04–2005-I, 15–05–2005-III, 15–06–2005-III, 15–07–2005-I, 15–08–2005-II, 15–12–2005-III, 15–14–2005-II, 15–15–2005-III

HAMID SULTAN JC

24 SEPTEMBER 2007

Land Law — Acquisition of land — Reference to court — Preliminary issue on bona fide conduct of state — Whether challenge to bona fide of state's acquisition must be made by way of judicial review and not in land reference proceedings

The objectors in this land reference had raised a preliminary issue that the State Government of Sarawak did not acquire the land in good faith and they had abused their powers in acquiring the lands in that it was purportedly published that the land was acquired for a technology park but in actual fact it was for a private enterprise. In consequence, the objectors said that the court ought to determine the bona fide of the State Government's conduct before the assessment proper could be made to determine the valuation date, ie whether it should be the date s 47 notice of the Sarawak Land Code ('SLC') was published or date when s 48 notice was published. In this case, there was no formal application or pleadings filed by the respective parties on the issues raised. Upon the preliminary issues raised by the objectors, the learned counsel for the respondent raised the issue whether or not the objectors could question the bona fidenes of s 47 notice in these proceedings or whether it should be challenged by way of judicial review. To this, the objectors submitted that remedies for protecting both private and public rights could be given in private law proceedings as well as by way of an application for judicial review. Further, the objectors submitted that they were not challenging the acquisition of the land but their grievance was only in respect of the compensation awarded.

Held, dismissing the preliminary objection:

The court in dealing with land reference is compelled to comply with the provisions of the SLC. Land reference is a specific provision and does not come within the meaning of originating process to bring extraneous issues to be dealt with by the court. Such extraneous issues must be dealt with by way

of proper application to the court and cannot be taken in s 56 of SLC proceedings. In this instant case, no application for either declaration or certiorari had been made by the objectors to the courts, either to nullify or quash the acquisition process. So, the only issue was for the court to determine whether the objections from the objectors to the award of compensation made by the Superintendent, based on the market value of land as at the date of s 47 notification was adequate. If it is not adequate, the court was to determine the amount of compensation to be awarded for the land, taking into consideration the provision of s 60 of the SLC (see para 14).

[Bahasa Malaysia summary

Pembantah-pembantah dalam rujukan tanah terebut telah menimbulkan isu awalan bahawa Kerajaan Negeri Sarawak tidak memperoleh tanah tersebut secara niat baik dan telah menyalahgunakan kuasa dalam pemerolehan tanah tersebut di mana ia dikatakan telah menyiarkan bahawa tanah tersebut telah diperoleh untuk satu taman teknologi tetapi pada hakikatnya ia adalah untuk perusahaan persendirian. Akibatnya, pembantah-pembantah tersebut mengatakan bahawa mahkamah patut menentukan bona fide perbuatan Kerajaan Negeri sebelum taksiran sebenar dibuat untuk menentukan tarikh penilaian, iaitu sama ada ia patut merupakan tarikh notis s 47 Kanun Tanah Sarawak ('KTS') disiarkan. Dalam kes ini, tiada permohonan atau pliding formal yang telah difailkan oleh pihak-pihak berkenaan berhubung isu-isu yang dibangkitkan. Berdasarkan isu-isu awalan yang ditimbulkan oleh pembantah-pembantah tersebut, peguam bijaksana bagi pihak responden telah menimbulkan isu sama ada atau tidak pembantah-pembantah boleh menyoal bona fide notis s 47 dalam prosiding tersebut atau sama ada ia patut dicabar melalui semakan kehakiman. Berhubung ini, pembantah-pembantah berhujah bahawa remedi-remedi untuk melindungi kedua-dua hak-hak persendirian dan awam boleh diberikan dalam prosiding undang-undang persendirian begitu juga melalui satu permohonan untuk semakan kehakiman. Seterusnya, pembantah-pembantah berhujah bahawa mereka tidak akan mencabar pemerolehan tanah tersebut tetapi kilanan mereka hanya berkaitan pampasan yang diawardkan.

Diputuskan, menolak bantahan awal tersebut:

Mahkamah dalam mengendalikan rujukan tanah hendaklah mematuhi peruntukan KTS. Rujukan tanah adalah peruntukan spesifik dan tidak terangkum dalam maksud proses pemula untuk memulakan isu-isu asing untuk dibicarakan oleh mahkamah. Isu-isu asing sebegini hendaklah dikendalikan melalui permohonan yang betul kepada mahkamah dan tidak boleh dimasukkan dalam prosiding s KTS (lihat perenggan). Dalam kes semasa, tiada permohonan untuk deklarasi mahupun certiorari telahpun

dibuat oleh pembantah-pembantah kepada mahkamah, sama ada untuk membatalkan atau memetahkan proses pemerolehan tersebut. Oleh itu, satu-satunya isu adalah untuk mahkamah menentukan sama ada bantahan-bantahan daripada pembantah-pembantah terhadap award pampasan yang dibuat oleh Superintendan, berdasarkan nilai pasaran tanah tersebut sebagai tarikh pemberitahuan s 47 adalah memadai. Jika tidak memadai, mahkamah perlu menentukan jumlah pampasan yang patut diawardkan untuk tanah tersebut, dengan mengambilkira peruntukan s 60 KTS (lihat perenggan 14).]

Notes

For cases on reference to court, 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1979–1993.

Cases referred to

Ahmad bin Ghani & Ors v Superintendent of Lands & Surveys First Division [1978] 1 MLJ 253 (refd)

Aik Hoe & Co Ltd v Superintendent of Lands & Surveys First Division [1968] 1 MLJ 293 (refd)

Aun Huat & Brothers Sdn Bhd & Ors v Sime Darby Bhd & Anor [2003] 6 MLJ 49 (refd)

Collector of Land Revenue v Alagappa Chettiar [1971] 1 MLJ 43 (refd)

Federal Airports Corporation v Aerolineas Argentinas & Ors 147 ALR 649 (refd)

Indrani a/p Ramasamy v Lembaga Kelayakan Profesion Undang-Undang, Malaysia [2007] 1 MLJ 177 (refd)

Lim Cheng Chuan Realty Co Sdn Bhd vs Kerajaan Negeri Pulau Pinang [1999] 4 MLJ 669 (refd)

Majlis Perbandaran Ampang Jaya v Steven Phoa Cheng Loon & Ors [2006] 2 MLJ 389 (refd)

Mercury Communications Ltd v Director General of Telecommunications and another [1996] 1 All ER 575 (refd)

Ngu Toh Tung & Ors v Superintendent of Lands & Surveys, Kuching Division [2006] 1 MLJ 142 (refd)

O'Reilly v Mackman and others and other cases [1982] 3 All ER 1124 (refd)

Pahang South Union Omnibus Co Bhd v Minister of Labour and Manpower & Anor [1981] 2 MLJ 199 (refd)

Rekapacific Bhd v Securities Commission & Anor and other appeals [2005] 2 MLJ 269 (refd)

Roy v Kensington & Chelsea and Westminster Family Practitioner Committee [1992] 1 All ER 705 (refd)

Trustees of the Dennis Rye Pension Fund and another v Sheffield City Council [1997] 4 All ER 747 (refd)

Universiti Malaya v Pentadbir Wilayah Persekutuan Kuala Lumpur [2003] 3 MLJ 185 (refd)

Legislation referred to

Rules of the High Court 1980 O 1 r 2(2), O 15 r 16, O 53
Sarawak Land Code ss 47, 48, 49, 56, 60
Specific Relief Act 1950 s 44

Frank Tang (Leong Hsin Ru with him) (Tang & Advocates) for the objectors.
Fam Boon Kim (Gerald Empaling Donald with her) (Legal Officers, State Attorney-General's Chambers, Kuching) for the respondent.

Hamid Sultan JC:

[1] This is my judgment in respect of the preliminary issues raised by the parties to the action seeking my determination before dealing with the land reference, pursuant to s 56 of the Sarawak Land Code ('SLC') suit, filed by the objectors and opposed by the respondent.

[2] The objectors on the date of the hearing of the land reference informed the court that the State Government of Sarawak in this case did not acquire the land in good faith and they have abused their powers in acquiring the said lands under this land reference, in that it was purportedly published that the said land was acquired for a technology park but in actual fact it was for a private enterprise. In consequence, the objectors say that the court ought to determine the bona fide of the State Government's conduct before the assessment proper can be made to determine, the valuation date ie whether it should be the date s 47 notice of the SLC was published or date when s 48 notice was published. In this case, it must be noted that there was no formal application or pleadings filed by the respective parties on the issues raised.

[3] Upon the preliminary issues raised by the objectors, the learned counsel for the respondent raised the issue whether or not the objectors can question the bonafidenes of s 47 notice in these proceedings or whether it should be challenged by way of judicial review. To this, the objectors say that remedies for protecting both private and public rights can be given in private law proceeding as well as by way of an application for judicial review. Further, the objectors say that they are not challenging the acquisition of the said land but their grievance is only in respect of the compensation awarded.

BRIEF FACTS

[4] This land reference case consists of 13 other cases which are to be tried jointly, pursuant to s 56 of SLC. The objectors are registered proprietors of their respective land and are dissatisfied with the compensation awarded, for the resumption of the subject lands by the State Government of Sarawak.

The background of the case is as follows:

(a) on 18 August 1993, the s 47 notification was gazetted in the Sarawak Government Gazette as GN No 2493, notifying that the subject lands and all other lands situated at Sungai Bayor/Sungai Kuap, Kota Samarahan are likely to be needed for the development of a Technology Park.

(b) subsequently, on 6 September 1994, the s 48 declaration was published in the Sarawak Government Gazette as GN No 3023 whereby the subject lands and all other lands situated at Bayor, Samarahan were needed for Technology Park Site.

(c) on 10 May 1999, the s 49 notice was issued to the respective objectors by the respondent and thereafter, awards for the resumption of the subject lands were made by the respondent on 24 June 1999.

[5] Before I deal with the issues, I must say, land reference cases under s 56 of the SLC has specific procedure spelt out in the SLC. The duty of the court and the relief which can be granted is very restrictive. The scope and the acquisition procedure are as follows:

(i) Reference to the court is made when an objector, whose land has been compulsorily acquired by the Government under Part IV of the SLC, requires the Superintendent to refer the award of compensation to the court 'for the determination of the court'.

(ii) The relevant statutory provisions are in ss 56, 57 & 58 of the SLC which are reproduced below:

> Reference to Court
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> 56(1) Any person interested who has not accepted the award may, by written application to the Superintendent and on payment of the prescribed fee, require that the matter be referred by the Superintendent for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.
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> (2) The application shall state the grounds on which objection to the award is taken.
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> (3) Every such application shall be made —
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> (a) if the person making it was present or represented before the Superintendent at the time when he made his award, within six weeks from the date of the Superintendent's award; and

(b) in other cases, within six weeks of the receipt of the copy of the award from the Superintendent under s 52(2) or within six months from the date of the Superintendent's award, whichever period shall first expire.

Superintendent's statement to the court

57(1) In making the reference the Superintendent shall state for the information of the court in writing under his hand —

(a) the situation and extent of the land with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land and the addresses of such persons;

(c) the amount awarded for damages and paid or tendered under ss 47 and 53, or either of them, and the amount of compensation awarded under s 51; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a Schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

Service of notice

58 The court shall thereupon cause a notice, specifying the day on which the court will proceed to determine the objection and directing their appearance before the court on that day, to be served on the following persons:

(a) the applicant;

(b) all persons interested in the objection except such if any of them as have consented without protest to receive payment of the compensation awarded;

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Superintendent.

(iii) It is clear from the provisions of section 56(2) read with s 58 that the court's duty and power are conferred by statute, ie by the said provisions of the SLC. In consequence, the High Court is conferred with the powers and jurisdiction to determine the objection in a limited sense. Section 56(2) requires that the application for reference to the court shall state the grounds on which objection to the award is taken. The court's determination of the objection has to be based on the grounds submitted by the objectors under s 56(2), and no other

grounds. In this case, the Superintendent is party only and stands as the respondent and notice of hearing was served on him, pursuant to s 58(c) of the SLC as the objective relates to the amount of compensation. Since the objection is to compensation, the court is bound by sections 60 and 61 of the SLC, to consider or disregard matters which are expressly spelt out in those two sections and no others.

(iv) Sections 25(1) and (2) of the Courts of Judicature Act 1964 ('CJA'), set out the powers of the High Court. It reads —

> Power of the High Court
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> 25(1) Without prejudice to the generality of art 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.
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> (2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:
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> Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

(v) therefore, the powers to determine objections to awards of compensation for land compulsorily acquired under the SLC are vested by ss 56 to 58 thereof. In my view, to challenge the acquisition process, an order of certiorari is required to quash the decisions of the minister to do so (see *Pemungut Hasil Tanah, Pulau Pinang vs Kam Gin Phaik & Ors* [1983] 2 MLJ 390).

Role of assessors

(vi) in a land reference case, the court sits with two assessors. Section 59(1) of the SLC provides as follows:

> Appointment of assessors
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> 59(1) The court shall appoint two persons for the purpose of aiding the court in determining the objection. Every person so appointed shall be legally bound to attend and serve as an assessor unless excused for some reason to be approved by the court.

(vii) This means that the court in determining the objection by an objector to the award of compensation made by a Superintendent must appoint two persons as assessors to aid the court in determining whether the compensation awarded by the Superintendent is adequate.

(viii) Sections 62(4), 63 and 64 of the SLC provides as follows:

> Rules as to the amount of compensation
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> 62(4) The provisions of this section and ss 60 and 61 shall be read and explained to the assessors by the court before they give their opinions as to the amount of compensation to be awarded.
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> Assessor's opinion to be recorded
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> 63 The opinion of each assessor shall be given orally and shall be recorded in writing by the court.
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> Difference of opinion
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> 64 In case of a difference of opinion between the court and the assessors, or either of them, the opinion of the court shall prevail.

(ix) Having regard to the above statutory provisions, it is clear that the role of the assessors in a land reference case is to provide his opinion to the court with regard to the amount of compensation to be awarded to an objector whose land has been compulsorily acquired by the Government.

(x) In *Aik Hoe & Co Ltd v Superintendent of Lands & Surveys First Division* [1968] 1 MLJ 293 at p 294, the Privy Council, after reviewing ss 59 and 66 of the SLC held that:

> It is clear from these provisions that the findings of the assessors are not to be equated with the findings of a jury: that they are for the assistance of the court: and that the determination is that of the court.

(xi) having regard to the abovementioned statutory provisions, a court sitting in a land reference case with two assessors has only the authority and jurisdiction conferred by the SLC to determine the amount of compensation to be awarded to an objector whose land has been compulsorily acquired by the Government under Part IV of the SLC.

In *Ngu Toh Tung & Ors v Superintendent of Lands & Surveys, Kuching Division* [2006] 1 MLJ 142 (refd), Gopal Sri Ram JCA opined (at p 148):

> Now what substantial injustice have the appellants suffered as a result of the first respondent's unlawful decision? The answer is: none whatsoever. In fact, they have benefited by the erroneous decision. They ought, on a strict application of s 60(1)(a) of the Code to have received compensation of only RM5,000 per acre. Instead they have received 20 times that sum. The appellants are still unhappy with that award. That is something that goes to quantum. And as far as the quantum of compensation is concerned, there is the special remedy by way of land reference provided by the Code. In such circumstances, it is not competent for the appellants to move the High Court for judicial review …

[6] The objectors say that the compensation awarded by the respondent is inadequate because it was based on the market value of the subject lands as at the date of the s 47 notice, when in fact it should have been based on the date of the s 49 notice. The objectors further contend that the reason why the compensation should be based on the date of the s 49 notice is due to the fact that the Sarawak Government had acted in bad faith and abused its powers when it acquired the subject lands. They assert that the Sarawak Government took advantage of the said s 47 notice to acquire the subject lands for the purpose of the Sarawak International Medical Centre, and not a Technology Park Site, when it should have started the acquisition procedure afresh. Consequently, it is the objectors' argument that the respondent's decision to assess the compensation payable based on the market value of the subject lands as at the date of the s 47 notice is invalid. Therefore, the objectors say that the issue of whether or not the Sarawak Government had acted bona fide arises incidentally in the course of determining whether or not the compensation awarded by the respondent is adequate. As such, they assert that bona fide issue may be challenged collaterally in the present proceedings and not just by way of judicial review. The objectors rely on the following cases namely: (i) *O'Reilly v Mackman and others and other cases* [1982] 3 All ER 1124; (ii) *Roy v Kensington and Chelsea and Westminster Family Practitioner Committee* [1992] 1 All ER 705; (iii) *Mercury Communications Ltd v Director General of Telecommunications and another* [1996] 1 All ER 575; (iv) *Trustees of the Dennis Rye Pension Fund and another v Sheffield City Council* [1997] 4 All ER 747; (v) *Federal Airports Corporation v Aerolineas Argentinas & Ors* 147 ALR 649and say that the matter has been relatively settled by the recent Federal Court's decision of *Majlis Perbandaran Ampang Jaya v Steven Phoa Cheng Loon & Ors* [2006] 2 MLJ 389 where the court opined (at pp 410–411):

> It is clear that when the speeches by Lord Woolf MR and Pill LJ are read in their proper perspective, they explicitly recognize that remedies for protecting both private and public rights can be given in private law proceeding and an application for judicial review. It is pertinent to note the observations made by Lord Woolf MR in explaining the seminal decision in *O'Reilly v Mackman* [1983] 2 AC 237 when he said as follows:
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> > Where does that leave *O'Reilly v Mackman* and what can be done to stop this constant unprofitable litigation over the divide between public and private law proceedings? What I could suggest is necessary to begin by going back to first principles and remind oneself of the guidance which Lord Diplock gave in *O'Reilly v Mackman*. This guidance involves recognizing (a) that remedies for protecting both private and public rights can be given in both private law proceedings and on an application for judicial review;
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> Another significant case referred to by Lord Woolf MR was *Roy v Kensington & Chelsea and Westminster Family Practitioner Committee* [1992] 1 All ER 705, where it was held before a strong bench of law Lords comprising Lords Bridge, Emslie,

Griffiths, Oliver and Lowry that although an issue which depended exclusively on the existence of a purely public law right should, as a general rule, be determined in judicial review proceeding and not otherwise, a litigant asserting his entitlement to a subsisting private law right, whether by way of claim or defence, was not barred from seeking to establish that right by action by the circumstance that the existence and extent of the private right asserted could incidentally involve the examination of a public law issue.

[7] Further, the objectors rely on the following cases and authorities namely:

(i) In *Aun Huat & Brothers Sdn Bhd & Ors v Sime Darby Bhd & Anor* [2003] 6 MLJ 49 where Kang Hwee Gee J said:

> In applying public law principles to the issues at hand I am not unmindful of the fact that in the normal course a challenge on an administrative decision is normally made by a public law action for judicial review where the decision itself may be quashed by the court. But an administrative act may be impeached in the course of a collateral proceeding, where its impropriety is quite obvious as in the instant case. (Emphasis added.)

(See *Indrani a/p Ramasamy v Lembaga Kelayakan Profesion Undang-Undang, Malaysia* [2007] 1 MLJ 177.)

(ii) The learned authors of *Administrative Law in Malaysia*, Sweet & Maxwell Asia, 2006 where it was stated:

> We would thus venture to conclude that in addition to the exclusivity principle, the exceptions already referred to under the discussion of the English position would prima facie apply in Malaysia, subject to any written law to the contrary. The test ultimately is one substance over form: the determinative factor should be the appropriateness of procedure adopted in the particular factual matrix. Apart from the English decisions cited in support of this, the flexibility is desirable for other grounds as well.
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> 1. It must be a correct judicial policy to discourage reliance on the part of decision-making authorities on procedural defences.
> 2. The exclusivity principle is founded on a division between public and private law concerns: consequently, there is the danger that artificial distinctions would be maintained to put a particular case into a ready made category when in reality, and with considerable wisdom, it has been pointed out that the public and private law distinctions, "have no clear or settled meaning …

3. We would suggest that there is no difference in the intendment of the English Law Commission and the Malaysian Rules Committee: both did not envisage that O 53 should be the sole route to challenge the validity of administrative decisions. This would further support the application of Boddington in the local context.

4. It is significant that the RHC should be utilised to facilitate the administration of justice, and not make it difficult for genuine grievances to be heard.

5. Proceedings outside Order 53 may be appropriate where a case involves complex factual inquiry. This is particularly so, given, rightly, that cross-examination and discovery are seldom allowed in judicial review proceedings.

[8] Based on the above authorities, the objectors say this is the appropriate forum to challenge whether or not the Sarawak Government had acted bona fide during the acquisition process of the said lands. And say that judicial review will not be appropriate to challenge the bona fide of s 47 notice as cross-examination and discovery are not permitted in judicial review, and rely on the case of *Rekapacific Bhd v Securities Commission & Anor and other appeals* [2005] 2 MLJ 269 where Gopal Sri Ram JCA opined (at p 274):

> The second point that needs to be made — and made quite emphatically — is that it is only in very rare cases that either cross-examination or discovery or both should be permitted in judicial review proceedings. This is because questions of fact are rarely in dispute in judicial review proceedings. Of course, if there are any essential or fundamentally important questions of fact that are in serious dispute then the judicial review court would be entirely justified in ordering cross-examination to enable it to make the relevant finding of fact.

[9] In consequence, the objectors say that this is the appropriate forum as it involves a complex inquiry of, amongst others, the following facts:

(a) whether the subject lands were indeed acquired for a different purpose than that stated in the ss 47 and 48 notices, ie for the Sarawak International Medical Centre instead of Technology Park.

(b) whether the Sarawak Government knew at all material times that the subject lands were no longer needed for a Technology Park Site, ie the original purpose stated in the ss 47 and 48 notices, but were needed for the Sarawak International Medical Centre instead.

(c) whether the Sarawak International Centre is managed by a private company, ie Sarawak Specialist Hospital and Medical Centre Sdn Bhd (Company No 553070-M).

(d) whether the respondent had previously issued a s 49 notice dated 2 May 1995 in respect of the subject lands but did not act on it and proceeded to issue a fresh s 49 notice dated 10 May 1999 instead.

(e) whether the Sarawak Government had initially decided to release the subject lands from the ss 47 and 48 notices only to subsequently change its mind.

RESPONDENT'S SUBMISSION

[10] The learned counsel for the respondent has put a comprehensive and articulate submission which has enabled me to write this judgment. The respondent's submission can be summarised as follows:

(i) the grant of certiorari is an additional power conferred by s 25(2) of the CJA. To obtain an order of certiorari, the objectors must comply with the rules of court, governing application for certiorari. Order 53 of the Rules of the High Court 1980 ('the RHC') is relevant (see *Pahang South Union Omnibus Co Bhd v Minister of Labour and Manpower & Anor* [1981] 2 MLJ 199]. The objectors have failed to do so and this court cannot exercise the power to entertain any application for certiorari let alone, to grant the same.

(ii) as to declaration to nullify the compulsory acquisition process, s 44 of the Specific Relief Act 1950 (Act 137) ('the SRA') clearly requires a party seeking declaratory reliefs to institute a 'Suit'. Order 1 r 2(2) and O 15 r 16 of the RHC, show that the RHC does not apply to land reference cases where 'written law' ie the SLC, have provided for rules for the purposes of the initiation of such cases (s 56), filing of statutory statements (s 57) and service of notice on the relevant parties (s 58).

(iii) accordingly, having regard to s 25(1) and (2) of the CJA 1964, this court has no powers in a land reference case to entertain any application for reliefs in the nature of certiorari or declaration to quash or nullify the land acquisition process which is now the subject matter of these land reference cases.

(iv) in *Collector of Land Revenue v Alagappa Chettiar* [1971] 1 MLJ 43 the Privy Council has set out the functions of the High Court when a reference is made to the High Court. Lord Diplock opined (at p 44):

> In cases relating to the amount of compensation to be paid for land acquired under the Land Acquisition Act 1960 the respective functions of the High Court in deciding objections to the collector's award, of the Federal Court in determining appeals from the decision of the High Court, and of their Lordships' Board in advising the Yang di-Pertuan Agong as to the disposition of an appeal from the Federal Court differ from one another.

> Although upon referring an objection to the High Court for its determination the collector is required to state the grounds on which the amount of compensation was determined, the reference to the High Court is not in the nature of an appeal from the collector's award. It is in the nature of an original hearing in which the applicant is the plaintiff and the collector the defendant. The onus lies upon the applicant to satisfy the court by evidence that the amount of compensation awarded is inadequate; and the collector is entitled to call evidence in support of the amount awarded. His evidence is not confined to supporting the award upon the grounds stated in the notice of reference. He may amplify them or justify the amount awarded on other grounds. The judge, with the assistance of the advice proferred to him by the assessors, makes his own estimate of the amount of compensation upon the evidence adduced before him; but if at the conclusion of the evidence he is not satisfied that the amount awarded by the collector is inadequate, the award must be upheld and the application dismissed.

(v) Lord Diplock's judgment was cited with approval in the Sarawak case of *Ahmad bin Ghani & Ors v Superintendent of Lands & Surveys First Division* [1978] 1 MLJ 253 and also by the KL High Court in *Universiti Malaya vs Pentadbir Wilayah Persekutuan Kuala Lumpur* [2003] 3 MLJ 185.

(vi) These authorities and the clear provisions of s 58 of the SLC reinforce the submission that in a land reference case, the High Court does not have the power or jurisdiction to grant certiorari to quash, nor a declaration to nullify the land acquisition process or the decision(s) of the minister in regard thereto. The court's function is only to determine the adequacy of the compensation for the land acquired.

(vii) In *Lim Cheng Chuan Realty Co Sdn Bhd vs Kerajaan Negeri Pulau Pinang* [1999] 4 MLJ 669 the court opined:

> But justice would not be achieved, rather eschewed, if action for a declaration could be brought to challenge the acquisition procedure, for that would mean that the acquiring authority, before it could use the land acquired, would have to sit out the statute of limitations. And that could not have been the intention of the Act. A challenge to the acquisition procedure must be made 'as soon as possible', and certiorari is the [only] proper procedure.

[11] Additionally, the Court of Appeal in *Ngu Toh Tung & Ors v Superintendent of Lands & Surveys, Kuching Division* [2006] 1 MLJ 142 at p 148 held:

A The appellants are still unhappy with that award. That is something that goes to quantum. And as far as the quantum of compensation is concerned, there is the special remedy by way of land reference provided by the Code. In such circumstances, it is not competent for the appellants to move the High Court for judicial review. As observed by Lord Halsbury in *Pasmore v Oswaldtwistle Urban* B *District Council* [1898] AC 387:

> The principle that where a specific remedy is given by a Statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the Statute, is one which is very familiar and which runs through the law. I think Lord Tenterden accurately states that principle in the case of *Doe* C *v Bridges* (1 B & Ad 847) at p 859. He says: 'where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner'.

D **[12]** On the basis of all these authorities, the respondent asserts that the court should confine itself to the issue on adequacy of compensation awarded to the objectors only in these land reference proceedings.

[13] I have read the statutory statement and submissions of the parties in E detail. I am inclined to agree with the submission of the respondent. My reasons are as follows:

(i) The court in dealing with land reference is compelled to comply with the provisions of the SLC. Land reference is a specific provision and F does not come within the meaning of originating process to bring extraneous issues to be dealt with by the court. Such extraneous issues must be dealt with by way of proper application to the court and cannot be taken in s 56 of SLC proceedings.

(ii) In this instant case, no application for either declaration or certiorari G has been made by the objectors to the courts, either to nullify or quash the acquisition process. So, the only issue to be determined by the court must be the objectors' objection to the quantum of compensation awarded by the Superintendent.

H (iii) The only issue in this case is for the court to determine whether the objections from the objectors to the award of compensation made by the Superintendent, based on the market value of land as at the date of s 47, notification is adequate. If it is not adequate to determine the amount of compensation to be awarded for the land taking into consideration the provision of s 60 of SLC.

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[14] For reasons stated above, I dismiss the objectors' argument with cost, and the said land reference to be fixed for full hearing on 18–19 October 2007. The getting up fees for the preliminary issue shall not exceed RM20,000. If costs cannot be agreed, the respondent is at liberty to tax costs. I hereby order so.

Preliminary objection dismissed.

Reported by Loo Lai Mee